



Federal Communications Commission
Washington, D.C. 20554

MAY 20 1996

RECEIVED

JUN 13 1996

The Honorable Patty Murray
United States Senator
2988 Jackson Federal Building
915 Second Avenue
Seattle, Washington, Washington 98174

Dear Senator Murray:

Thank you for the letter dated April 17, 1996, on behalf of your constituent, Ken Tyas, regarding the Commission's policies for licensing 800 MHz Specialized Mobile Radio (SMR) systems. Mr. Tyas expresses concern regarding the Commission's decision to redesignate the 800 MHz General Category Pool frequencies. Mr. Tyas also expresses concern about the proposed use of competitive bidding procedures to award future licenses on these frequencies.

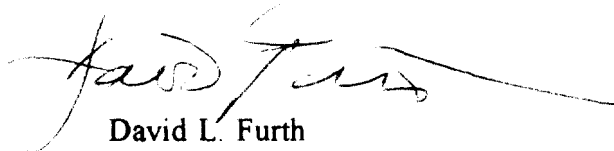
On December 15, 1995, the Commission issued a First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (First Report and Order) in PR Docket No. 93-144, which addressed the treatment of the General Category. In the First Report and Order, the Commission determined that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. In fact, our licensing records indicate that there are three times as many SMR licensees using General Category channels as any other type of Part 90 licensee. The Commission therefore concluded that the most efficient use of the General Category channels would be to redesignate them exclusively for SMR use. Thus, the First Report and Order provided that in the future, only SMR service providers will be eligible for new licenses in the General Category pool. Existing non-SMR licensees on General Category channels will continue to operate under their current authorizations, however, and will be fully protected from interference by new SMR licensees. In addition, the Commission's decision specifies that SMR service providers are no longer eligible to apply for licenses on Business or Industrial/Land Transportation channels. As a result, we anticipate that the First Report and Order will make more spectrum available for licensees such as Mr. Tyas, who are currently eligible, and will continue to be eligible, to apply in the Business and Industrial/Land Transportation categories. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions and proposals made.

The Commission's decision to auction 800 MHz SMR spectrum is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging /

efficient spectrum use. The Commission has concluded that auctioning of SMR licenses satisfies these criteria. In particular, we believe that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures. We note that the statute does not distinguish between new services (such as Personal Communications Services) and existing services in terms of whether initial licenses in a given service are auctionable. As noted above, however, the Commission's decision to use auctions applies only to issuance of initial licenses in the service, and is not intended to affect rights afforded to licensees under existing authorizations.

Thank you for your inquiry.

Sincerely,

A handwritten signature in dark ink, appearing to read "David L. Furth", with a long horizontal flourish extending to the right.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Enclosure



FEDERAL COMMUNICATIONS COMMISSION

Telefax Cover Sheet

PRB
auction
2360

Date 5-6-96

FROM:

Name: Judy Bins
Bureau/O: ST
Phone: 206-820-6271
Fax Number: 206-820-0126

TO:

Name: Louise Murphy
Organization: CIB
Office: _____
Fax Number: 202-418-2810

SPECIAL INSTRUCTIONS:

I have contacted the
Congressman's office to let them
know I have forwarded their
letter to Washington DC for
response.

This Cover Sheet is Page 1 of 3 Pages

PATTY MURRAY
WASHINGTON

COMMITTEES:
APPROPRIATIONS
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
SELECT COMMITTEE ON ETHICS
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510-4704

April 17, 1996

Ms. Judy Bisso
Public Affairs Specialist
Federal Communications Commission
Compliance and Information Bureau, Seattle Office
11410 N.E. 122nd Wy., Ste. 312
Kirkland, Washington 98034

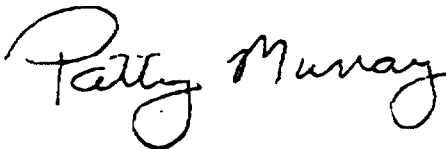
Dear Ms. Bisso:

Enclosed are copies of correspondence I received from Ken Tyas, regarding the difficulties he has been experiencing with Federal Communications Commission.

I would appreciate your looking into this matter and reporting your findings to the attention of Ed O'Neill in my Seattle office.

Thank you for your time and consideration regarding this matter.

Sincerely,



Patty Murray
United States Senator

PM:ejo

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4873 South Pass Rd., Sumas, WA 98295 • Phone (206) 966-2084

MARCH 25, 1996

RE: FCC PR DOCKET NO. 93-144, REDISIGNATION OF THE 800 MHZ
GENERAL CATEGORY POOL TO A COMMERCIAL-ONLY SERVICE AND
PROPOSED IMPLEMENTATION OF COMPETITIVE BIDDING PROCESS

DEAR SIR:

IN THE ABOVE REFERENCED PROCEEDING, THE FEDERAL COMMUNICATIONS COMMISSION HAS REALLOCATED 150 CHANNELS IN THE 800 MHZ BAND THAT HAVE BEEN SHARED JOINTLY BY BOTH PRIVATE AND COMMERCIAL LICENSEES FOR MORE THAN TWENTY YEARS. THE FCC'S JUSTIFICATION FOR THIS AGGRESSIVE ACTION WAS SIMPLY THAT THE "OVERWHELMING MAJORITY" OF CHANNELS WERE USED FOR COMMERCIAL OPERATIONS. IN FACT, WHILE THERE ARE A SIGNIFICANT NUMBER OF COMMERCIAL SUBSCRIBER-BASED OPERATIONS, THERE ARE ALSO MORE THAN 3,400 NON COMMERCIAL LICENSEES. WE HAPPEN TO BE ONE OF THE LATTER WHO DO NOT USE THE SPECTRUM TO GENERATE BUSINESS REVENUES. WE ARE A CONSTRUCTION COMPANY THAT USES THE RADIO SYSTEM TO COMMUNICATE BETWEEN EQUIPMENT OPERATORS ON THE JOB SITE.

NOW THAT THE FCC HAS RECLASSIFIED THE BAND FOR COMMERCIAL USE, IT HAS, SIMULTANEOUSLY, PROVIDED ITSELF AUTHORITY TO CONDUCT AUCTIONS AND HAS PROPOSED TO DO SO.

WE DO NOT SUPPORT-NOR DO WE BELIEVE YOU SHOULD SUPPORT-FCC REGULATORY ACTIONS THAT WOULD SEEM TO EXCEED THE FCC'S AUCTION AUTHORITY AS SET FORTH IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993. THE OPPORTUNITY TO GENERATE REVENUES WAS NOT TO BE USED AS JUSTIFICATION FOR IGNORING THIS CONGRESSIONAL DIRECTIVE.

WE RESPECTFULLY REQUEST THAT YOU URGE THE FCC TO REVERSE ITS RECENT REDESIGNATION OF THE 800 MHZ GENERAL CATEGORY POOL. THAT ACTION ALONE WOULD PRECLUDE THE FCC FROM INSTITUTING AUCTION PROCESSES IN A BAND THAT IS HEAVILY ENCUMBERED BY BOTH PRIVATE AND COMMERCIAL LICENSEES. WE ARE AT A LOSS TO UNDERSTAND FEDERAL GOVERNMENT ACTION THAT WOULD EXPOSE OUR FIRM TO HAVING TO COMPETE FOR SPECTRUM THROUGH AUCTIONS WHEN OUR ASSIGNED CHANNELS WERE VALIDLY LICENSED IN ACCORDANCE WITH EXISTING POLICY.

YOUR INTEREST AND ASSISTANCE WILL BE MOST APPRECIATED.

SINCERELY,


KEN TYAS
PRESIDENT